IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 502 (MS) OF 2006

Alok Gupta,
S/o late Sri Anand Kumar,
R/o Gupta Compound, Tikonia, Haldwani,
District-Nainital. .....Petitioner.

Versus

1. Ajay Kumar Gupta,
2. Anil Kumar Bansal,
3. Ramesh Chandra Gupta, through its Guardian Sri Anil Kumar Bansal, All S/o late Anirudh Kumar Gupta,
4. Smt. Anita Gupta, D/o late Anirudh Kishore Gupta,
5. Supla Gupta, W/o late Ashok Kumar Gupta,
6. Ankit Bansal, S/o late Ashok Kumar Gupta, All are R/o Gupta Compound, Tikonia, Haldwani, District-Nainital.
7. Akansha Bansal, D/o late Ashok Kumar Gupta (Deceased), through its legal representative Amit Jain, S/o Sri Phool Chandra Jain, R/o near Panchayati Jain DharamSala, Rani Bazar, Saharanpur.
8. Smt. Malti Gupta, W/o late Anand Kumar Gupta,
9. Smt. Salni Mittal, W/o Sri Rajendra Mittal, both are R/o Gupta Compound, Tikonia, Haldwani, District-Nainital.
10. Smt. Alka Garg, W/o Sri Ravi Krishan Garg, R/o Chamunda Vihar, Ramnagar Road, Kashipur, District-Udham Singh Nagar.
11. Smt. Usha Agarwal, W/o Sri Omkar Saran Agarwal, R/o Omkar Book Depot Main Chauraha, Bilashpur, District-Rampur(U.P.).

12. Smt. Abha Gupta, W/o Sri Anand Swaroop Gupta, R/o New Shiv Apartment A-26, Pocket C-II, West Enclave, Preetam Pura, New Delhi.

13. Smt. Asha Gupta, W/o Sri Baijnath Gupta, R/o 49 New Campus, I.I.T., New Delhi. .....Respondents.

Mr. Pradeep Heriya & Mr. K.K. Tiwari, Advocate for the petitiner 1.
Mr. Sharad Sharma, Advocate for the respondents.

Dated: 05.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Pradeep Heriya and Sri K.K .Tiwari, Advocate for the petitioner and Sri Sharad Sharma, Advocate for the respondents.

Both the parties have agreed that let the writ petition be disposed of at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 13th April, 2006 passed by the Additional District Judge, Fast Track Court, Haldwani, District-Nainital in Civil Suit No. 8 of 1999, Alok Kumar Gupta Vs. Ajay Kumar Gupta and others.

Briefly stated, a suit was filed for being Suit No. 4 of 1999 Alok Gupta Vs. Ajay Kumar Gupta and others by the petitioner praying for partition and cancellation of Will. During the course of the proceedings of the suit, an application for amendment was filed and the matter came before this Court in Writ Petition NO. 576 (ms) of 2004. Following order was passed by this court on 30.08.2005:-

" *Accordingly, the order dated 09.03.2004 passed by the Additional District Judge, Haldwani, District Nainital which is impugned in this writ petition is hereby quashed. The amendment in the plaint is allowed at the cost of Rs. 500/-*

(Rupees five hundred only) which shall be paid to the respondent.

Since, the suit pertains to the year 1999, therefore, the Trial Court is directed to conclude the trial within a period of three months' from the date of production of the certified copy of this order.

With the aforesaid observation, the writ petition is disposed of accordingly."

In pursuance of the aforesaid order, the petitioner has amended the plaint by incorporating paragraph 2-अ in the plaint to the following effect:-

"2-अ–कि विवादित सम्पत्ति जो कि गुप्ता कम्पाउण्ड तिकोनिया के नाम से प्रचलित है, नजूल भूमि है व नगरपालिका, हल्द्वानी के नजूल रजिस्टर के कमांक 53 पर श्री छितरमल के नाम दर्ज है। इसका कोई पक्का अभिलेख नहीं है, इस प्रकार यह तथ्य साबित होना है कि विवादित सम्पत्ति श्री छितरमल, श्री जगदीप्र कृपाल, श्रीमती गुलाबो देवी या श्री अनिरूद्व किप्रोर गुप्ता की निजि मालिकाना हक की सम्पत्ति नहीं है वरन् विवादित सम्पत्ति का स्वामित्व सरकार में निहित है जिसकी व्यवस्थापिका नगरपालिका हल्द्वानी है। चूंकि विवादित सम्पत्ति पर श्री अनिरूद्व किप्रोर गुप्ता का कोई मालिकाना हक नहीं था इसलिये दूसरे की सम्पत्ति को कथित वसीयत द्वारा काटने को कोई हक श्री अनिरूद्व किप्रोर गुप्ता को कभी नहीं रहता तथा विवादित सम्पत्ति सिॅर्फ नगर पालिका के अभिलेखों में दर्ज व्यक्ति के वारिसों के मध्य अधिकारों के मुताबिक बांटी जा सकती है जो अधिकार विवादित सम्पत्ति में श्री अनिरूद्व किप्रोर गुप्ता को कानून के अनुसार प्राप्त हो तथा इस प्रकार विवादित सम्पत्ति की वसीयत किसी भी प्रकार नही की जा सकती।"

The petitioner thereafter has preferred an application under Order 1 Rule 10 C.P.C. read with Section 151 and under Order 6 Rule 17 of C.P.C. for impleadment of the State of Uttaranchal through Collector Nainital as well as Nagar Palika Parishad, Hadwani-Kathgodam, Haldwani, Nainital through its Executive Officer as party to the proceedings. The said

application has been rejected on the ground that the petitioner has every knowledge of the proceedings and as such in order to linger on the proceedings, he has filed present application.

A perusal of the record shows that the petitioner was allowed to amend the plaint by order dated 30th August, 2005 and ultimately he has incorporated Para No. 2-अ after amending the plaint as Paragraph No. 2-A and therefore, the necessity arose to the petitioner to incorporate the State as well as Nagar Palika Parishad. The reference of both the parties have been given in paragraph 2-अ of the plaint.

Considering the facts and circumstances, the State of Uttaranchal and Nagar Palika Parishad may be impleaded as parties to the suit in order to avoid the controversy in question. Since the suit is of 1999, the Civil Judge, is directed to decide the suit itself within a period of four months from the date of production of the certified copy of the order.

It is made clear that unnecessary adjournment shall not be granted and the petitioner shall cooperate with the disposal of the suit within the time allowed by this court. The State as well as Nagar Palika Parisahd shall file necessary pleadings within a period of one month so as to dispose of the suit itself on the pleadings of the parties. The respondents no. 1 and 2 shall also be given full opportunity to rebut the averments made by the Nagar Palika Parishad and the State of Uttaranchal.

Subject to the aforesaid, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

05.05.2006
Rathour